1871.

SUPREME COURT OF THE UNITED STATES.

No. 109.

THE UNITED STATES, APPELLANTS,

vs.

JAMES BELL, CLAIMANT OF THE SHIP BARON RENFREW, HER TACKLE, APPAREL, AND FURNITURE.

APPEAL FROM THE DISTRICT COURT, U. S., FOR THE NORTHERN DISTRICT OF CALIFORNIA.

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GIDEON, print.

UNITED STATES OF AMERICA,
Northern district of California.

Libel of information.

UNITED STATES OF AMERICA
vs.
THE "BARON RENFREW," &c.

District court of the United States of America, in and for the northern district of California.

To the Hon. Ogden Hoffman, jr., judge of the district court of the United States of America, in and for the northern district of California.

Be it remembered, that on the eleventh day of August, in the year of our Lord one thousand eight hundred and fifty-two, at the June term of the United States district court, of the northern district of California, before the honorable Ogden Hoffman, jr., judge of the said court, comes Calhoun Benham, attorney of the said States for the district aforesaid, and alleges, and gives the said judge to understand and be informed, that heretofore, to wit, on the seventh day of August, in the year of our Lord one thousand eight hundred and fifty-two, at the port of San Francisco, and within the collection district of San Francisco, and on waters navigable from the sea by vessels of ten or more tons burthen, and within the admiralty and maritime jurisdiction of the said court, and of the United States aforesaid, and in the said northern district, Thomas Butler King, collector of the said collection district, did seize, as forfeited to the United States aforesaid, a certain ship or vessel, called the Baron Renfrew, for the causes hereinafter mentioned, to wit:

First. That heretofore, to wit, on the sixth day of August, A. D. 1852, at the northern district of California, to wit, at the port of San Francisco, certain goods, wares, and merchandise, to wit, ninety and nine bags of rice; which said goods, wares, and merchandise had, before that time last mentioned, been brought into the United States of America, and into the collection district of San Francisco, in said northern district of California, from a certain foreign port or place, to wit, Hong Kong, a dependency of the kingdom of Great Britain, in a certain ship or vessel, called the "Baron Renfrew," of which said ship or vessel, one William Curran, then and at said district, was master, were unladen and delivered from the said ship or vessel without a permit from T. Butler King and J. A. Cost, (T. Butler King then being the collector of the said port of San Francisco, and J. A. Cost

then being the naval officer of said last mentioned port,) for such unlading and delivery having been first, or ever, obtained; said goods, wares, and merchandise, then being of great value, according to the then highest market price of the same at said port of San Francisco, to wit, four hundred dollars; contrary to the statutes in such case made and provided, namely, the act to regulate the collection of duties on imports and tonnage, approved on the second day of March, A. D. 1799, and the fiftieth section thereof.

Second. That also, heretofore, to wit, on the sixth day of August, A. D. 1852, in the night time, that is to say, not between the rising and setting of the sun, at the northern district of California, to wit, at the port of San Francisco, certain goods, wares, and merchandise, to wit, ninety and nine bags of rice, which said goods, wares, and merchandise had, before the time last mentioned, been brought into the United States of America, and into the collection district of San Francisco, and the northern district of California, from a certain foreign port or place, to wit, Hong Kong, a dependency of the kingdom of Great Britain, in a certain ship or vessel, called the "Baron Renfrew," of which said ship or vessel one William Curran, then at the said district, was master, were unladen and delivered from the said ship or vessel without special license, for which unlading and delivering having first, or ever, been obtained from T. Butler King and Jacob A. Cost, (T. Butler King then being the collector, and Jacob A. Cost then being the naval officer, of said port of San Francisco,) said goods, wares, and merchandise, then being of great value, according to the then highest market price of the same at the port of San Francisco, to wit, $400, contrary to the fiftieth section of the act of Congress, entitled an act to regulate the collection of duties on imports and tonnage, approved on the second day of March, A. D. 1799. Whereby, and by force of the statutes in such case made and provided, the said ship, her boats, tackle, apparel, and furniture, became and are forfeited to the United States aforesaid, and to the uses in the last mentioned statutes specified.

Wherefore the said attorney, on behalf of the United States and of the said Thomas Butler King, and all others concerned, prays the consideration of this honorable court and its order, in the premises, and the usual process and rendition thereof, requiring all persons interested in the said ship to be, and appear, and answer the premises before this honorable court on the 24th day of August, A. D. 1852, at the United States district court room, in the city of San Francisco, in the said northern district of California, at eleven o'clock in the morning of that day; and that all due proceedings being had in the premises, the said ship, her boats, tackle, apparel, and furniture, for the causes afore cited, and others appearing, may remain forfeited to the United States as aforesaid, and be condemned by the definitive sentence and decree of this honorable court, as forfeited to the United States as aforesaid, and to the uses in said statutes specified.

(Signed,) CALHOUN BENHAM.
U. S. attorney.

Monition.

NORTHERN DISTRICT OF CALIFORNIA, *ss.*

The President of the United States of America, to the marshal of the northern district of California, greeting:

Whereas a libel of information hath been filed in the district court of the United States, for the northern district of California, on the 11th day of August, A. D. 1852, by Calhoun Benham, esq., U. S. district attorney, on behalf of the United States of America against the ship "Baron Renfrew," her boats, tackle, apparel, and furniture, for the reasons and causes in the said libel mentioned, and praying the usual process and monition of the said court in that behalf to be made, and that all persons interested in the said ship Baron Renfrew, her tackle, &c., may be cited in general and special, to answer the premises, and all proceedings being had, that the said ship "Baron Renfrew," her tackle, &c., may, for the causes in said libel mentioned, be condemned as forfeited to the use of the United States.

You are therefore hereby commanded to attach the said ship Baron Renfrew, her tackle, &c., and to detain the same in your custody until the further order of the court respecting the same, and to give due notice to all persons claiming the same, or knowing or having anything to say why the same should not be condemned and sold pursuant to the prayer of the said libel; that they be, and appear, before the said court, to be held in and for the northern district of California on the 24th day of August, at eleven o'clock in the forenoon of the same day, if the same shall be a day of jurisdiction, otherwise on the next day of jurisdiction thereafter, then and there to interpose a claim for the same, and to make their allegations in that behalf. And what you shall have done in the promises, do you then and there make return thereof, together with this writ.

Witness the Hon. Ogden Hoffman, jr., judge of the said court, at the city of San Francisco, in the northern district of California, this 11th day of August, A. D. 1852, and of our independence the seventy-seventh.

JNO. A. MONROE, *Clerk.*

Endorsed.—Filed 11th August, 1852.

JNO. A. MONROE, *Clerk.*

Received August 11, 1852.

D. F. DOUGLASS, *U. S. M.*
By GEO. P. JOHNSTON, *Deputy.*

In obedience to the within monition, I attached the ship Baron Renfrew, therein described, on the 11th day of August, 1852, and have given due notice to all persons claiming the same that this court will, on the 25th day of August inst., (if that shall be a day of jurisdiction,

if not, on the next day of jurisdiction thereafter,) proceed to the trial and condemnation thereof, should no claim be interposed for the same.

D. F. DOUGLASS, *U. S. Marshal,*
By N. DOUGLASS, *Deputy.*

Dated August 25, 1852.

Claim.

To the honorable Ogden Hoffman, jr., judge of the district court of the United States, for the northern district of California.

Duncan Gibb, of the city of Liverpool, kingdom of Great Britain, owner of the ship "Baron Renfrew," her tackle, apparel, and furniture, intervening for his interest in said ship, her tackle, apparel, &c., appears before this honorable court, and claims the said ship, her tackle, apparel, and furniture, and states that he is the true and bona fide owner thereof, and that no other person is the owner thereof.

And, thereupon, the said claimant prays that this honorable court will be pleased to direct a restitution of the same to him, and otherwise right and justice to administer in the premises.

DUNCAN GIBB,
By attorney, JAMES BELL.
CHETWOOD,
EDWARDS, and
ROSE,
Proctors for claimants.

NORTHERN DISTRICT OF CALIFORNIA, *ss.*

James Bell being sworn says, that he is the agent or attorney in fact of Duncan Gibb, the above named claimant; that the said claimant is absent from this district; being, as deponent believes, a resident of the city of Liverpool, kingdom of Great Britain; that the above claim is true to the best of deponent's knowledge and belief.

HENRY B. JANES,
U. S. Commissioner.

Endorsed.—Filed August 16, 1852.

JOHN A. MONROE, *Clerk.*

Order appointing appraisers.

At a stated term of the district court of the United States of America, for the northern district of California, held at the court-house in the city of San Francisco, on Monday, the 16th day of August, A. D. 1852.

Present, Hon. Ogden Hoffman, jr., district judge.

THE UNITED STATES
vs.
SHIP BARON RENFREW.

On motion of proctor for claimants, ordered by the court, that J. P.

Haven, F. W. Macoudray, and Captain Barney, be, and they are hereby, appointed as appraisers, who (after first being duly sworn well and truly to appraise and fix the value of the ship Baron Renfrew, now in the custody of the marshal of this district) shall proceed to appraise and fix the value of said ship, and report the same with all convenient speed to this court.

OGDEN HOFFMAN, JR.,
U. S. District Judge.

Order of substitution.

At a stated term of the district court of the United States of America, for the northern district of California, held at the court-room in the city of San Francisco, on Tuesday, the 17th day of August, in the year of our Lord one thousand eight hundred and fifty-two.

Present, the honorable Ogden Hoffman, district judge.

THE UNITED STATES
vs.
THE BARON RENFREW.

With the consent of the United States attorney, and on motion of John Chetwood, proctor, ordered, that Joseph Eyre and Edward Carry be substituted as appraisers to appraise the Baron Renfrew, in the place of J. P. Haven and F. W. Macoudray.

OGDEN HOFFMAN, JR.

Endorsed.—Filed August 17, 1852.

Appraisement.

In pursuance of an order from the honorable Ogden Hoffman, jr., judge of the United States district court, for the northern district of California, we, the undersigned, have this day examined the hull, spars, and appurtenances of the British ship Baron Renfrew, for the purpose of assessing her value.

We report, that she is four years old, is a good substantial ship, well found in spars, sails, boats, and ground tackle, and in every respect in complete order.

In our judgment, she is worth in this port twenty-three thousand (23,000) dollars, at which sum we assess her value.

REUBEN BARNEY,
E. CARRY,
JOSEPH EYRE.

San Francisco, August 18th, 1852.

Endorsed.—Filed August 18, 1852.

JOHN A. MONROE, *Clerk.*

Order on return of monition.

At a stated term of the district court of the United States of America, for the northern district of California, held at the court-house in the

city of San Francisco. on Wednesday, the 25th day of August, in the year of our Lord one thousand eight hundred and fifty two.

Present, the honorable Ogden Hoffman, jr., district judge.

THE UNITED STATES
vs.
THE BARON RENFREW.

The marshal having returned upon the monition in this cause, that he had attached the said vessel, her tackle, &c., and had given due notice to all persons claiming the same that this court would, on this day, proceed to the trial and condemnation thereof, should no claim be interposed for the same.

On motion of C. Benham, esq., United States attorney, proclamation was made for all persons having any thing to say why the said vessel should not be condemned and sold, to answer the prayer of the libel to appear, and no one appearing.

On like motion it was ordered, that default of all parties be taken, and that a decree of condemnation and forfeiture and sale be entered.

OGDEN HOFFMAN, JR.,
U. S. District Judge.

Decree of forfeiture.

At a stated term of the district court of the United States of America, for the northern district of California, held at the court-house in the city of San Francisco, on Wednesday the 25th day of August, in the year of our Lord one thousand eight hundred and fifty-two.

Present, the honorable Ogden Hoffman, jr., district judge.

THE UNITED STATES
vs.
SHIP BARON RENFREW.

The monition issued in this cause having been heretofore returned, and the usual proclamation having been made, and the default of all persons being duly entered, it is thereupon, on motion of Calhoun Benham, esq., attorney for the United States, ordered, sentenced, and decreed, by the court now here, and his honor, the district judge, by virtue of the power and authority in him vested, doth hereby order, sentence, and decree, that the ship Baron Renfrew, her tackle, &c., mentioned in the libel in this cause, be and the same are accordingly condemned and forfeited to the United States.

And upon like motion it is further ordered, sentenced, and decreed, that the clerk of this court issue a decree of "venditioni exponas" to the marshal of the district, returnable upon the day of September next; and that upon the return thereof the clerk distribute the proceeds according to law.

OGDEN HOFFMAN, JR.,
U. S. dist. judge.

Endorsed.

Filed August 25th, 1852.

JNO. A. MONROE, *Clerk.*

1575.
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Order vacating decree.

At a stated term of the district court of the United States of America, for the northern district of California, held at the court-house in the city of San Francisco on Tuesday, the 31st day of August, in the year of our Lord one thousand eight hundred and fifty-two; present, honorable Ogden Hoffman, jr., district judge.

THE UNITED STATES
vs.
SHIP BARON RENFREW.

On motion of proctor for claimants, and upon hearing the United States attorney, and upon due deliberation being had, it is now ordered by the court, that the order of default and decree of condemnation and forfeiture entered in this cause be set aside, and that the claimants have leave to file their answer and claim.

OGDEN HOFFMAN, JR.,
U. S. district judge.

Claim.

District court of the northern district of California.

THE UNITED STATES
vs.
THE SHIP BARON RENFREW.

To the honorable Ogden Hoffman, jr., judge of said court.

And James Bell, agent of Duncan Gibb, and consignee of said ship, of San Francisco, comes and claims as the property of the said Duncan Gibb the said ship, seized by the said United States collector of the port of San Francisco, and libelled and propounded against as forfeited in and by the libel of information aforesaid, to wit, for a violation of the fiftieth section of the act of 1799.

And the said James Bell, agent and consignee of said ship, alleges that at the time of the seizure aforesaid the said Duncan Gibb was, and still is, the sole owner and lawful proprietor, bona fide, of the said ship, her tackle, apparel, and furniture, and of this he is ready to make due proofs, as the court shall direct.

JAMES BELL,
Agent for Duncan Gibb,
BATES & RICE,
Proctors for claimant.

Sworn to and subscribed by James Bell, agent and consignee, before me, this 27th August, 1852.

Witness my hand and official seal.

[L. S.]

JAS. RICE, JR.,
Notary public.

Answer.

And the libel of information having been read, heard, and fully understood by him, the said claimant, he says, that by color of the seizure aforesaid he is unjustly and grievously vexed; nevertheless, for plea and answer to the said several counts and allegations in the said libel of information contained, and in order to entitle himself to a restitution of the said ship "Baron Renfrew," so claimed by him as aforesaid, he propounds and alleges as follows:

First. That as to the said counts and allegations he says, that by reason of any matter therein contained the said ship ought not to be decreed to be and remain forfeited, because he says, that the said 54 bags of rice which were unladed from the said ship, as stated in said information, were not wares and merchandise, but were the sea stores of said ship, which had been particularly specified in the report or manifest made by the master thereof at the custom-house in San Francisco on her entry at that port; and that, in the oath taken by the said master on entry, he declared that the said rice was truly sea stores, and not intended by way of merchandise or for sale; and that on making said oath the master obtained a permit to retain the said rice as sea stores for his return trip, pursuant to the provisions of the 45th section of the act of 1799; and of this he is ready to make due proof as the court shall direct.

Second. That if any other or greater quantity of rice was found on board said ship as sea stores than were specified in the entry of said ship and the oath of said captain, or if any of said rice was landed from said ship without a permit first obtained from the collector or naval officer of the port of San Francisco, as stated in said libel of information, that the same was done by the captain, in his own wrong, and without the knowledge, consent, or connivance of the owners of said ship, who reside and now are in Liverpool; and that by such landing, pursuant to the provisions of the 45th section of the act of 1799, the said ship is not liable to forfeiture or confiscation, but the rice is so liable, and the master to pay treble its value; and of this he is ready to make due proof as the court shall direct.

Wherefore he prays that the said ship, her tackle, apparel, and furniture may be decreed to be restored to him, and that he may hence be dismissed with his reasonable damages and costs.

(Signed) BATES & RICE,
Proctors for claimants.

Sworn to and subscribed before me, this 27th August, 1852.
JAMES BELL.

Witness my hand and official seal.
JAS. RICE, Jr., [L. S.]
Notary public, county San Francisco, California.

Exceptions.

UNITED STATES OF AMERICA
vs.
The BARON RENFREW.

United States district court, northern district of California.

To the Hon. Ogden Hoffman, jr., judge of the United States district court, in and for the northern district of California.

The libellants in the above entitled cause except to the answer of the claimant James Bell, as informal and insufficient, for the reasons following, to wit:

1. The matters set up in the first article of said answer are insufficient in law to bar the forfeiture of the said ship or vessel Baron Renfrew, inasmuch as the rice therein described as sea stores were "goods, wares, and merchandise," within the meaning of the fiftieth section of the Collection act in the libel heretofore filed mentioned.

2. That the allegations, of the second article of the said answer are impertinent and immaterial.

CALHOUN BENHAM,
U. S. Attorney.

Decree on exceptions.

At a stated term of the district court of the United States of America, for the northern district of California, held at the court-room in the city of San Francisco, on Monday the first day of June, A. D. 1852: present, the honorable Ogden Hoffman, jr., judge dist., &c.,

THE UNITED STATES OF AMERICA
vs.
The Ship BARON RENFREW, JAMES BELL, claimant.

Decree.

The above entitled cause having been brought to a hearing, on the third day of September, A. D. 1852, and the counsel of the respective parties having been heard upon the libel of information, the claim and answer of James Bell, and the exceptions thereto of the United States district attorney; it is ordered and decreed by the court here, and his honor, the United States district judge, doth order and decree, that the exceptions of said attorney to the first article of said answer be overruled, and the exceptions of the said attorney to the second article of said answer be and the same is hereby sustained.

OGDEN HOFFMAN,
U. S. district judge.

Endorsed—Filed September 14, 1852.

JNO. A. MONROE, *Clerk.*

[REC. CIX, D. T., 1852.]—2

Decree dismissing the libel, &c.

United States district court, for the northern district of California.

UNITED STATES OF AMERICA
vs.
The ship BARON RENFREW.

At a special session of the said court, begun and held at the court-room in San Francisco, on the 21st day of September, A. D. 1852.

Present, Hon. Ogden Hoffman, jr.

This cause having been heretofore heard on the libel of information filed on behalf of the United States, the claim and answer of Duncan Gibb, and the exceptions to said answer, and the court having sustained the second exception to the second article of said answer, and having overruled the first exception to the first article of said answer: On motion of Bates and Rice, proctors of the claimant Duncan Gibb, it is ordered, adjudged, and decreed, and this court doth hereby order, adjudge, sentence, and decree, that the said libel be and the same is hereby dismissed, and the said ship Baron Renfrew, her boats, tackle, apparel, and furniture, be discharged from the further custody of the marshal of this court, and the same restored to the claimant, and that reasonable cause of seizure be certified to the collector in said libel mentioned.

OGDEN HOFFMAN, Jr.,
U. S. district Judge.

Endorsed—"Filed September 24, 1852."

Notice of appeal.

District court of the United States, for the northern district of California.

The UNITED STATES OF AMERICA
vs.
The ship BARON RENFREW, James Bell, claimant.

SIR: The libellants intend to appeal from the final decree of the court in this cause.

Dated September 24, 1852.

CALHOUN BENHAM.
U. S. Atty. N. D. C.

To JOHN A. MONROE, esq., *Clerk.*

Endorsed—"Filed September 24, 1852.
JOHN A. MONROE, *Clerk.*"

1877.

Petition of appeal.

United States of America, northern district of California.

UNITED STATES OF AMERICA, libellants and appellants,
vs.
The ship BARON RENFREW, her tackel, apparel, and furniture, and James Bell, claimant and appellee.

To the honorable Supreme Court of the United States of America.

The appeal of the United States of America, the above named libellants and appellants, respectively sheweth, that on the eleventh day of August, A. D. 1852, the said United States, by Calhoun Benham, esq., their attorney, in and for the northern district of California, filed their libel in the district court of the United States, in and for the said district, against the ship Baron Renfrew, her tackle, apparel, and furniture, and against all persons intervening for their interest therein, in a cause civil and maritime, for a forfeiture of said vessel, therein alleged to have been incurred by a violation in the port of San Francisco, in said district, of the fiftieth section of the act of Congress, entitled An act to provide for the collection of duties on imports and tonnage, approved on the twenty-second day of February, A. D. 1799; that said vessel was arrested upon process issued upon said libel; that the above named James Bell, as agent, and on behalf of one Duncan Gibb, filed his claim to said vessel, and petitioned that the same should be delivered to him upon bond; whereupon three appraisers were appointed by the court to appraise the same, which was done in the sum of twenty-three thousand dollars, and so reported to the said court; that the above named claimant thereupon filed his answer to said libel, and the said libellants' two several exceptions to said answer.

That the said cause came on to be heard before the honorable Ogden Hoffman, jr., judge of the said district court, on or about the 3d day of September, in the year aforesaid, upon the libel and answer, and libellants' exceptions thereto; and the said judge, having advised thereon, on the 14th day of September, in the year aforesaid, made a decree or sentence in said cause, whereby it was, among other things, sentenced and decreed, that the first of the libellants' said exceptions be overruled.

That thereupon the said judge, having further advised on said cause, on the 24th day of September, in the year aforesaid, made a final decree or sentence, whereby it was, amongst other things, sentenced and decreed, that the said libel be dismissed, and the said ship be delivered to the said claimant.

And these libellants are advised, and insist, that the said decrees are erroneous, inasmuch as the said vessel was and is liable to forfeiture.

And these appellants, for this reason, appeal from said final decree

in favor of the said claimant to your honorable court, and pray that the said decree, of the said district judge, and libel, answer, exceptions, orders, and proceedings in the said cause, may be sent to the Supreme Court of the United States of America without delay, and that the said Supreme Court will proceed to hear the said cause anew; and that the said final decree of the said district court, and every part thereof, may be reversed, and a decree made forfeiting said vessel, &c., with costs, or such other decree as to the said Supreme Court shall seem just.

Dated San Francisco, September 24th, A. D. 1852.

CALHOUN BENHAM,
U. S. Att'y, N. D. C.

Endorsed—"Filed Sept. 24, 1852.
JNO. A. MONROE, *Clerk.*"

Citation.

UNITED STATES OF AMERICA, *ss.*

To James Bell, greeting.

You are hereby cited and admonished to be and appear before the Supreme Court of the United States, on the first Monday of December next, being the first day of its next term, pursuant to an appeal from the district court of the United States for the northern district of California, wherein the United States, are appellants and you are appellee, to show cause, if any there be, why the said decree shall not be corrected, and speedy justice be done to the parties in that behalf.

Witness the honorable Ogden Hoffman, junior, United States district judge, in and for the northern district of California, this 24th day of September, in the year of our Lord one thousand eight hundred and fifty-two.

[L. S.]

OGDEN HOFFMAN, JR.,
U. S. District Judge.
JNO. A. MONROE, *Clerk.*

Endorsed—"Filed Sept. 23d, 1852."
JNO. A. MONROE, *Clerk.*

"Rec'd Sept. 24, 1852.
D. F. DOUGLASS, *U. S. M.*,
By N. DOUGLASS, *Deputy.*"

"Served a proper copy of the within summons on James Bell, this 24th day of September, 1852."
DAVID F. DOUGLASS, *U. S. M.*,
By N. DOUGLASS, *Deputy.*

Northern district of California, United States district court, clerk's office.

I, John A. Monroe, clerk of the district court of the United States for said district, do hereby certify, that the annexed pages, from 1 to 11 (one to eleven) inclusive, contain a full and true transcript of the record, taken from the files in this office, in the case of the United States of America vs. the ship Baron Renfrew, her tackle, apparel, and furniture—James Bell, claimant.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, the seventh day of October, in the year of [SEAL.] our Lord one thousand eight hundred and fifty-two, and of the independence of the said States the seventy-seventh.

JOHN A. MONROE,
Clerk U. S. dist. court, N. D., California.